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Defendants' first motion to stay enforcement is premised upon plaintiff's motion to alter or amend the judgment to which the plaintiff later withdrew. The defendants made the argument that under Rule 62(b) of the Federal Rules of Civil Procedure, the Court may stay execution of judgment when there is a pending motion to alter or amend a judgment. Since plaintiff's motion has been withdrawn, defendants' first motion [Doc. 83] is **DENIED as moot.**

With respect to the second motion [Doc. 88], the defendants move the Court under Rules 62(a), 62(c), and 62(d) of the Federal Rules of Civil Procedure for an order approving their supersedeas bond and staying the execution or enforcement of the judgment pending the appeal. As to a stay of monetary damages, Rule 62(d) states as follows:

When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

It is well established that "Rule 62(d) entitles a party who files a satisfactory supersedeas bond to a stay of money judgment as a matter of right." *Arban v. West Pub. Corp.*, 345 F.3d 390, 491 (6<sup>th</sup> Cir. 2003) (quoting *Federal Prescription Serv., Inc. v. Am. Pharm. Ass'n*, 636 F.2d 755, 759 (D.C.Cir.1980)) (citing *Am. Mfr. Mut. Ins. Co. v. Am. Broad. Paramount Theatres, Inc.*, 385 U.S. 931(1966)).

As to the stay of reinstatement, a defendant is clearly not *entitled* to a stay of an injunction or injunctive type remedies as a matter of right. Rule 62(d) provides for stay of

judgment and supersedeas bond pending appeal “subject to exceptions contained in subdivision (a) of this rule.” That subdivision in turn refers to subdivision (c) for the particular rule on injunctions. This rule vests discretion in the court, sitting in equity, to stay an injunction pending appeal under such conditions it deems proper for protection of the rights of the adverse party. A court will therefore consider a motion, as addressed, to its sound discretion, and will examine contentions in the light of insuring justice to the parties of a lawsuit. *Yamaha Intern. Corp. v. United Furniture Workers of America*, 892 F.2d 80 (6<sup>th</sup> Cir. 1989) (citing *Dewey v. Reynolds Metals Co.*, 304 F.Supp. 116, 1118-19 (D.C. Mich. 1969)) (holding that, where a judgment includes both a money award and the grant or denial of an injunctive remedy, it is discretionary with the court whether to allow a stay on the injunctive remedy); see also 11 Wright & Miller, at 325-26.

In deciding whether to stay reinstatement, a court may look to four factors: (1) whether defendant has made a strong showing that it is likely to succeed on the merits of the appeal; (2) whether a defendant will suffer irreparable injury if no stay is granted; (3) whether a stay would substantially harm a plaintiff; and (4) the public interest. See *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6<sup>th</sup> Cir. 1991).

The defendants argue under all four factors in support of their contention that the judgment should be stayed and that the Court should accept the \$750,000 bond. The plaintiff requests the Court to deny the defendants’ prayer for stay of reinstatement and asks that the defendants be required to increase their proposed bond of \$750,000 to at

least \$850,000.

After careful consideration of the arguments, the Court finds that defendants' request for stay of the judgment, with respect to both the reinstatement and the monetary award, is warranted.<sup>1</sup> Accordingly, defendants' request for stay of the Court's judgment [Doc. 88] is **GRANTED**. With respect to defendants' motion for approval of bond [Doc. 88] and defendants' supersedeas bond for stay of money judgment and order of reinstatement pending appeal [Doc. 90], the said motions are **GRANTED in part and DENIED in part**. The Court will require the defendants to increase their supersedeas bond from \$750,000 to \$800,000.

**IT IS SO ORDERED.**

**ENTER:**

s/Thomas W. Phillips  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>However, in the Court's analysis regarding the stay of judgment, the Court clearly feels that the defendants are not likely to succeed on the merits of the appeal.